

CHAMBER'S ORDER NO. 1

THE NEW HAVEN COUNTY BAR ASSOCIATION BANKRUPTCY COMMITTEE PROGRAM FOR VOLUNTARY MEDIATION OF CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER DISPUTES IN CASES PENDING IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF CONNECTICUT IN NEW HAVEN

1.0 SPONSORSHIP AND AUTHORITY

1.1 Sponsorship by the New Haven County Bar Association (NHCBA)

The Bankruptcy Committee of the New Haven County Bar Association has offered to sponsor a program to encourage and promote the voluntary mediation of contested matters and adversary proceedings in cases pending in the United States Bankruptcy Court for the District of Connecticut in New Haven (the "NHCBA Bankruptcy Mediation Program"). The NHCBA Bankruptcy Mediation Program contemplates the appointment of qualified mediators to serve on a voluntary, no-fee basis, to assist the parties and the court in resolving, through mediation, a wide variety of disputes that commonly arise in the form of adversary proceedings or contested matters before the Bankruptcy Court in New Haven. The NHCBA Bankruptcy Mediation Program is voluntary and requires the consent and active participation of all parties to the dispute in question. In coordination with the Continuing Legal Education Committee of the New Haven County Bar Association, it is expected that the Bankruptcy Committee will also conduct Continuing Legal Education programs in order for volunteer mediators to meet the requirements hereinafter set forth.

The NHCBA Bankruptcy Mediation Program is targeted at the many types of disputes that commonly arise in the Bankruptcy Court and for which the parties often are unwilling to consider, or unable to afford, fee-based mediation. The rationale for sponsorship of the program for cases pending in the New Haven Bankruptcy Court is based upon the regional location and interests of the

New Haven County Bar Association and its members who will serve on the mediation panel.

1.2 Authority

LBR 9019-2 of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the District of Connecticut provides authority and guidance for the reference of cases to “voluntary ADR at any stage of the bankruptcy litigation deemed appropriate by the parties and the judge to whom the adversary proceeding or a contested matter has been assigned.” The NHCBA Bankruptcy Mediation Program provides for the referral of cases to voluntary mediation under the authority and procedures set forth in LBR 9019-2 and the procedures outlined hereafter which shall be applicable to all matters referred to the NHCBA Bankruptcy Mediation Program.

2.0 REGISTER OF VOLUNTARY MEDIATORS AND APPLICATION PROCEDURE

2.1 Register of Qualified Volunteer Mediators

The Clerk of the Bankruptcy Court in New Haven shall establish and maintain a register of qualified attorneys who have volunteered to serve, without compensation, as mediators in contested matters and adversary proceedings in cases pending in the Bankruptcy Court in New Haven. All attorneys so registered as volunteer mediators shall be subject to the approval of the Bankruptcy Court and shall be selected from lists of attorneys who meet the qualifications hereinafter described. The Bankruptcy Court, by and through one of the bankruptcy judges assigned to the New Haven Bankruptcy Court, shall review and approve the register of qualified attorneys on an annual basis or as often as the Bankruptcy Court deems necessary.

2.2 Applications for Persons Wishing to Serve as Volunteer Mediators

Applicants who wish to serve as volunteer mediators for the New Haven Bankruptcy Court shall complete an application. The application shall initially be submitted to and screened by the

Bankruptcy Committee of the New Haven County Bar Association whose sole functions shall be (i) to review applications to ensure that the applicants meet the qualifications set forth below and (ii) to forward and update a list of qualified applicants to the Bankruptcy Court for approval thereof at least on an annual basis. The application shall set forth the qualifications described herein and conform in format to the form attached as Appendix A.

2.3 Qualifications for Volunteer Mediators

In order to qualify for service as a volunteer mediator, an attorney shall certify to the Court that he or she meets the following minimum qualifications:

- a. Is duly licensed to practice before the courts of the State of Connecticut and the United States District Court for the District of Connecticut for at least one (1) year;
- b. Is in good standing as an active member of the State Bar of Connecticut;
- c. Has been admitted to practice in any state court for at least seven (7) years and before any Federal District Court for at least six (6) years;
- d. Has served as the attorney of record for at least five (5) adversary proceedings or contested matters in a United States Bankruptcy Court from commencement through completion (i.e., judgment, order or stipulation settlement); and
- e. Has completed not less than four (4) credit hours of Continuing Legal Education on the subject of mediation and/or alternative dispute resolution (this requirement is waived during the initial twelve (12) month period of the NHCBA Bankruptcy Mediation Program to allow for the orderly implementation of the program) identifying the sponsor of the course, the name of the course of study, the date(s) of the course, and the number of the credit hours completed.

In addition, annually the attorney shall certify that he or she:

- (1) Continues to be a member, in good standing, of the State Bar of Connecticut;
- and
- (2) Has not been suspended, or had a professional license revoked, or has a pending proceeding to suspend or revoke such license; and
- (3) Has at least four (4) credit hours of Continuing Legal Education on the subject of mediation and/or alternative dispute resolution (if that certification was not made in connection with the initial application); and
- (4) Has not resigned from any applicable professional organization or voluntarily relinquished the right to practice law in any jurisdiction while an investigation into allegations of misconduct which would warrant suspension, disbarment or professional license revocation was pending; and
- (5) Has not been convicted of a felony.

2.4 Removal from Register of Volunteer Mediators

A person shall be removed from the mediation register either at the person's request or by court order, which order may be with or without cause. If removed from the register by court order, the person shall not be returned to the register absent a court order obtained upon motion to the Bankruptcy Court and affidavit sufficiently explaining the circumstances of such removal and reasons justifying the return of the person to the register.

Any person who has not completed the required four (4) credit hours of Continuing Legal Education on mediation and/or alternative dispute resolution identifying the sponsor of the course, the name of the course of study, the date(s) of the course, and the number of credit hours completed

within one (1) year of the date of this Order shall be removed from the next list of eligible mediators submitted to the Clerk of the Bankruptcy Court in New Haven.

3.0 REVIEW OF APPLICATIONS AND SUBMISSION OF LIST OF ELIGIBLE MEDIATORS

3.1 Review of Applications by New Haven County Bar Association

Applications shall be submitted to the Bankruptcy Committee of the New Haven County Bar Association and shall be reviewed for compliance with the qualifications set forth above. Any incomplete applications or applications not meeting the criteria set forth above shall be returned to the applicant with an explanation of the reasons for being returned or with a request for completion of any missing information.

3.2 Submission of List of Eligible Volunteer Mediators to the Bankruptcy Court

A list of eligible mediators shall be submitted at least annually to the Clerk of the Bankruptcy Court by the Bankruptcy Committee of the New Haven County Bar Association. Each such list submitted shall be subject to the review and approval of the Bankruptcy Court at least annually. Volunteer mediators approved by the Bankruptcy Court shall be placed on the mediation register maintained by the Clerk of the Bankruptcy Court.

4.0 ASSIGNMENT TO MEDIATION

4.1 Mediation to be Voluntary and at any Stage in the Proceeding

A case may be referred to the NHCBA Bankruptcy Mediation Program at any stage of the litigation deemed appropriate by the parties and the judge to whom the particular case has been assigned in accordance with and pursuant to LBR 9019-2. If a case is to be assigned to the NHCBA Bankruptcy Mediation Program, the parties attending the pretrial conference, status conference or other hearing shall be provided with a copy of this Chamber's Order and the current list of eligible

mediators.

4.2 Stipulation for Reference to Mediation

When agreement among the parties and the Court for a voluntary mediation referral to the NHCBA Bankruptcy Mediation Program has been reached, the parties shall file jointly for the Court's endorsement a "Stipulation for Reference to Mediation," in the form attached hereto as Appendix B, in accordance with and pursuant to LBR 9019-2(c).

4.3 Selection of Volunteer Mediator from Register/Notification Procedure

In accordance with LBR 9019-2(c), parties who have agreed to refer their case to the NHCBA Bankruptcy Mediation Program shall jointly select the names of at least two mediators from the register of eligible mediators maintained by the Clerk of the Bankruptcy Court who the parties believe do not have any conflicts of interest with the parties, the case or the matter in controversy. The parties shall designate which of the two mediators they wish to serve as an alternate in the event the first mediator is unable to serve. The Clerk of the Bankruptcy Court shall thereupon mail a copy of the Stipulation for Reference to Mediation to the first mediator selected from the register. In the event that there appears any cause for declining the mediation, in the sole judgment of the mediator first contacted, the mediator shall notify the Clerk of the Bankruptcy Court and the Clerk of the Bankruptcy Court shall forthwith mail a copy of the Stipulation for Reference to Mediation to the alternate mediator designated by the parties. In the event the alternate mediator is unable to serve, the alternate mediator shall forthwith notify the Clerk of the Bankruptcy Court and the parties.

5.0 MEDIATION PROCEDURE

5.1 Scheduling of Mediation

In accordance with LBR 9019-2 the volunteer mediator shall fix a time and place for the

mediation conference, and all adjourned sessions, that is reasonably convenient for the parties, and shall give them at least 15 days' written notice of the initial conference. The conference shall be set to begin as soon as practicable, but in no event more than 45 days after the mediator has been notified of his or her selection. The volunteer mediator may, upon written stipulation of the parties (filed with the Court), grant one continuance of the conference, which continuance shall not extend the time from notification of the mediator's appointment to the conference to a period longer than 75 days.

5.2 Case Summary to be Submitted to Volunteer Mediator

Each party shall provide the mediator with a completed case summary in the format attached hereto as Appendix C. Said case summary shall be served on the mediator and all other parties not less than seven (7) calendar days prior to the date noticed for the mediation conference as set forth in paragraph 5.1 above.

5.3 Attendance and Preparation Required

The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and any adjourned sessions of that conference. The attorney for each party shall come prepared to discuss the following matters in detail and in good faith:

- a. All liability issues;
- b. All damage issues; and,
- c. The position of his/her client relative to settlement.

5.4 Parties to Attend

All individual parties shall personally attend the mediation conference unless excused by the mediator for cause. Parties, other than individuals, shall have a representative appear and attend the

mediation with authority to negotiate unless excused by the mediator. Individuals and other parties who have been excused from attendance shall nonetheless be available for conference with their counsel and the mediator by telephone. The mediator shall decide when it is appropriate for the parties to be present in the conference room and when it is appropriate to meet with their counsel separately.

5.5 Mediation Proceedings Privileged

All proceedings or writings of the mediation conference shall be held in accordance with and pursuant to LBR 9019-2(d) which provides that:

“All ADR sessions shall be deemed confidential and protected by the provisions of Fed. R. Evid. 408 and Fed. R. Civ. P. 68. No statement made or document produced as part of an ADR proceeding, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.”

5.6 No Service of Process at Site of Mediation

No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.

5.7 Mediator's Recommendations to be Disclosed to the Parties

If the mediator makes any oral or written suggestions as to the advisability of a change in any party's position with respect to settlement, the attorney for that party shall promptly transmit that suggestion to his or her client. The mediator shall have no obligation to make any written comments or recommendations, but may, in his or her discretion provide the attorneys for the parties with a written settlement recommendation memorandum. No copy of any such memorandum shall be filed with the Clerk or made available in whole or in part, directly or indirectly, either to the Court or to

a jury. The attorneys for the parties shall forward copies of any such memorandum to their clients and shall advise them of the fact that the mediator is a qualified attorney who has volunteered to act as an impartial mediator, without compensation, in an attempt to help the parties reach an agreement and avoid the time, expense and uncertainty of a trial.

5.8 Time Schedule for Mediation Activities

Subject to the time limitations set forth by the court order in the Stipulation for Reference to Mediator and in these rules, the mediator shall have the duty and authority to establish the time schedule for mediation activities, including a schedule for the parties to act upon the mediator's recommendation, having in mind that the fundamental purpose of these rules and the mediation is prompt dispute resolution.

6.0 WITHDRAWAL FROM MEDIATION

Any matter may be withdrawn from mediation by the judge assigned to the matter at any time upon a determination that for any reason the matter is not suitable for mediation. Any party to the Stipulation for Reference to Mediation may withdraw from the process by filing a notice of withdrawal which sets forth, if applicable, those matters settled or resolved by the parties.

7.0 PROCEDURE UPON COMPLETION OF MEDIATION

LBR 9019-2(e) shall govern the procedures upon the conclusion of the mediation session(s). Upon the conclusion of the voluntary mediation session(s) the mediator shall file, in accordance with and pursuant to LBR 9019-2(e), a report in the form attached as Appendix D. If a matter is reported settled, the parties shall submit all settlement documents to the mediator for approval.

8.0 IMMUNITY

By agreeing to participate in the NHCBA Bankruptcy Mediation Program governed by LBR

9019-2 the parties specifically agree that the mediators shall be immune from claims arising out of acts or omissions incident to their service as court appointees in the NHCBA Bankruptcy Mediation Program in the same manner and to the same extent as if they were acting as parajudicial officers appointed by the United States District Court.

9.0 POST-MEDIATION CONFLICTS OF INTEREST

With respect to conflicts of interest, volunteer mediators and their law firms shall be governed by applicable law and rules of professional conduct, including Rule 1.12 of the Rules of Professional Conduct as adopted by the Judges of the Superior Court of Connecticut and made applicable by Rule 3(a) of the Local Rules of the United States District Court for the District of Connecticut and Rule LBR 1001-1(b) of the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the District of Connecticut.

9.1 Implementation

This Chamber's Order No. 1. Governing Mediation of Contested Matters and Adversary Proceedings in Bankruptcy Cases shall become effective on October 22, 2003, and shall be applicable to all bankruptcy cases and related adversary proceedings filed or pending in the United States Bankruptcy Court for the District of Connecticut in New Haven on or after that date.

DATED: OCT 22 2003

Albert S. Dabrowski
Albert S. Dabrowski
Chief United States Bankruptcy Judge

Lorraine Murphy Weil
Lorraine Murphy Weil
United States Bankruptcy Judge

APPENDIX A

APPLICATION

UNITED STATES BANKRUPTCY COURT

DISTRICT OF CONNECTICUT NEW HAVEN DIVISION

The undersigned _____ with an office address of _____ hereby applies to the United States Bankruptcy Court for the District of Connecticut for permission to serve as a volunteer mediator and for his or her name to be entered on the Register of Voluntary Mediators maintained by the Clerk of the Bankruptcy Court in New Haven. The undersigned certifies to the Court that he or she has read Chamber's Order No. 1 of said Court and is qualified to serve in accordance with the requirements of Chamber's Order.

Name: _____

Address: _____
Street City State Zip

1. I was admitted to practice before the courts of the State of Connecticut on _____.
2. I am a member, in good standing, of the State Bar of Connecticut. My Connecticut State Juris Number is _____.
3. I was admitted to practice before the United States District Court for _____.
(Date of admission must be six or more years prior to the date of this Application)
4. Have you served as the attorney of record for at least five (5) adversary proceedings or contested matters in a United States Bankruptcy Court from commencement through completion (i.e., judgment, order or stipulation settlement)? Yes ___ No ___
5. Have you completed not less than four (4) credit hours of Continuing Legal Education on the subject of mediation and/or alternative dispute resolution? Yes ___ No ___
6. If the answer to question 5 above is "No", will you complete not less than four (4) credit hours of Continuing Legal Education on the subject of mediation and/or alternative dispute resolution within one (1) year from the date of your appointment as a volunteer mediator if your Application is accepted?¹ Yes ___ No ___

¹This question is applicable during the first year of the bankruptcy mediation program, October 22, 2003 - September 30, 2004.

7. Have you ever been suspended from the practice of law or had a professional license revoked? Yes ____ No ____
8. Is there now pending any disciplinary proceeding against you? Yes ____ No ____
9. Have you ever resigned from any applicable professional organization or voluntarily relinquished your right to practice law in any jurisdiction while an investigation into allegations of misconduct which would warrant suspension, disbarment or professional license revocation was pending? Yes ____ No ____
10. Have you ever been convicted of a felony? Yes ____ No ____

Signature

This Application should be submitted IN DUPLICATE to:

THE NEW HAVEN COUNTY BAR ASSOCIATION
P.O. BOX 1441
NEW HAVEN, CT 06506-1441

TO BE COMPLETED BY AUTHORIZED MEMBER OF THE BANKRUPTCY COMMITTEE
OF THE NEW HAVEN COUNTY BAR ASSOCIATION.

I hereby certify that the Bankruptcy Committee of The New Haven County Bar Association has reviewed the foregoing Application and has determined that the Applicant meets the qualifications, subject to Court Approval, for inclusion on the Register of Qualified Volunteer Mediators maintained by the Clerk of the Bankruptcy Court in New Haven. This qualification is:
unconditional _____
valid for one year _____

Dated: _____

Name _____

APPENDIX B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

In re: _____ Debtor	: : : : :	CHAPTER _____ CASE NO. _____
_____ Plaintiff		
v. _____ Defendant	:	ADVERSARY PROCEEDING NO. _____

STIPULATION FOR REFERENCE TO MEDIATION

1. The parties, _____, having agreed to submit to voluntary mediation in accordance with LBR 9019-2 and the voluntary mediation program sponsored by the Bankruptcy Committee of the New Haven County Bar Association, hereby seek the assignment of the above-captioned matter to the following mediator or, if such mediator is unable to serve, to the alternate:

Mediator:

Alternate:

Name

Name

Address

Address

City, State, Zip

City, State, Zip

Telephone

Telephone

2. The matter concerns:

☐ Dischargeability ☐ Voidable Transfer

☐ Objection to Claim ☐ Lien Avoidance

☐ Other: _____

3. The terms of the mediation are as follows: _____

4. The Attorneys for the parties are:

Name

Name

Address

Address

City, State, Zip

City, State, Zip

Telephone

Telephone

5. The parties are ordered to comply with the provisions of the Chamber's Order including submission of the case summary to the mediator by _____.

6. A stay is hereby entered in this _____ as to _____

_____.

7. Acknowledgment of Immunity:

The parties hereto acknowledge that by agreeing to participate in the voluntary mediation program sponsored by the Bankruptcy Committee of the New Haven County Bar Association the parties specifically agree that the mediator assigned to this matter shall be immune from claims arising out of acts or omissions incident to their service as court appointees in the NHCBA Bankruptcy Mediation Program in the same manner and to the same extent as if they were acting as parajudicial officers appointed by the United States District Court.

Date: _____

Plaintiff

Defendant

United States Bankruptcy Judge

APPENDIX C

-DO NOT FILE WITH THE COURT-

Debtor: _____

Case No.: _____

Plaintiff: _____

Adversary Proceeding No.: _____

Defendant: _____

CASE SUMMARY FOR MEDIATOR

1. State your individual name and street address. Also state the name of the party that you represent if you are completing this Case Summary as counsel to a party:

2. State the status of the case, the nature of any orders entered, and what discovery, if any, remains to be completed:

3. Describe in detail your claim or defenses, the facts on which they are based, giving relevant dates, and the legal authorities on which you rely. Include citation to any provisions of the Bankruptcy Code on which you rely and explain how they relate to your claim or defense. If necessary, please use an attachment for your answer.

4. State the name, street address and telephone number of each person who has material knowledge of facts relating to this controversy and specify his/her area of knowledge or expertise. If necessary, please use an attachment for your answer.

5. Describe each key document that relates to the issues and facts. You are encouraged to attach a copy of each such document. For each key document that you have described but not attached, state the name, street address and telephone number of each person who has the original document. If necessary, please use an attachment for your answer.

6. Describe each additional item of physical evidence, if any, that relates to the issues and facts, give its location and state the name, street address and telephone number of each person who has it. If necessary, please use an attachment for your answer.

7. State the name and street address of each insurance company, guarantor, bonding agency or co-obligor who is claimed by you to be responsible in whole or in part for the damages claimed against you. If necessary, please use an attachment for your answer.

8. Describe the factual basis and legal authority for any other matters that you believe will bear on the amount of any recovery or which will operate to bar or diminish any recovery. If necessary, please use an attachment for your answer.

9. If any portion of your claim or defense is based on an agreement that is not in writing, state the terms and the dates of such oral agreements. If necessary, please use an attachment for your answer.

10. Describe each item of recovery, damage or cost that you claim, and for each such item state the amount and show how it is computed. If necessary, please use an attachment for your answer.

Signature of party or counsel

APPENDIX D

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

In re: _____
Debtor

CHAPTER _____
CASE NO. _____

Plaintiff

v.

ADVERSARY PROCEEDING NO. _____

Defendant

MEDIATOR' S REPORT

The undersigned Court appointed mediator hereby certifies that:

1. On _____ mediation session(s) was/were held by the undersigned and the parties and their counsel were present in person or by telephone in accordance with Chamber's Order _____.
2. In accordance with LBR 9019-2(e) I hereby report that a settlement of the matter has/has not been reached.
3. (If settlement has been reached). The parties shall prepare and execute the stipulation for settlement on or before _____. The parties shall prepare and file any necessary motion for approval of compromise (with my consent) on or before_____.

4. (If settlement has not been reached). Although the matter has not been settled, the parties have agreed to narrow certain factual and/or legal issues, as set forth below:

DATED: _____

Mediator Name, Address and Telephone

(Original to be filed with the Court, service of copies by mail to be made on all parties or their counsel)